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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF TONTO BASIN WATER CO., INC., AN
ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANTS AND
PROPERTY AND FOR INCREASES IN ITS
WATER RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

DOCKET NO: W-03515A-14-0310

Arizona Corporation Commission
DOCKETED

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**TONTO BASIN WATER CO., INC.'S
EXCEPTION TO
RECOMMENDED OPINION AND ORDER**

JULY 1, 2015

1 Tonto Basin Water Co., Inc. ("Tonto Basin" or "Company") hereby submits its
2 exception to the Recommended Opinion and Order ("ROO"), dated June 23, 2015, in this
3 docket.

4 **I. SUMMARY**

5 Tonto Basin generally agrees with the ROO, and takes exception only to the
6 recommended effective date for new rates of August 1, 2015. In reaching a settlement on
7 all issues in dispute in this case, Staff and the Company agreed that new rates should be
8 effective as of June 15, 2015. The ROO adopts the settlement without material
9 modification but makes no mention of the June 15, 2015 date, recommending instead an
10 effective date of August 1, 2015. Accordingly, the Company requests that the
11 Commission modify the ROO to make the new rates effective on July 15, 2015, a date still
12 one month later than the date agreed to in the settlement adopted in the ROO. This date
13 not only corresponds to the beginning of a Company billing cycle, this modification is
14 also necessary for the Commission to more closely adhere to the time clock applicable to
15 this case, which clock runs out no later than July 7, 2015. Finally, modification of the
16 ROO in this way will help ensure the Company addresses its deteriorating financial
17 condition sooner.

18 In addition, Tonto Basin takes this opportunity to clarify the issue of notice.
19 During the hearing, the Company and Staff learned that various communications to a
20 designated e-mail address for Intervenor Tonto Creek Trail RV Park (through its owners
21 Gary and Margaret Lantagne) ("Tonto Creek Park") regarding settlement may have gone
22 unread. Because of this fact, as indicated in the ROO, the Company, Staff, and Tonto
23 Creek Park met and discussed the settlement—in particular the rate design—and
24 ultimately Tonto Creek Park agreed to the settlement.¹ Therefore, as discussed herein,

25
26 ¹ ROO at 10 ¶¶ 65-67.

1 the Petition filed by non-parties Darlene and William Justus on June 11, 2015, which cites
2 failure to notify customers and intervenor-customers, is unfounded.

3 **II. TONTO BASIN'S EXCEPTION**

4 **A. Background**

5 Tonto Basin filed its application on August 21, 2014, and received sufficiency on
6 October 10, 2014.² On November 7, 2014, a Procedural Order was issued, setting hearing
7 and related procedural deadlines.³ On December 11, 2014, Tonto Basin filed its request to
8 be treated as a Class D utility with a procedural schedule that eliminated some of the dates
9 and requirements for pre-filed testimony and a shorter time frame for a decision in this
10 docket.⁴ While the presiding Judge did not eliminate the hearing date, on January 8, 2015,
11 a new Procedural Order was issued, which waived the requirement for the parties to pre-
12 file surrebuttal and rejoinder testimonies, and set forth new, extended publication and
13 intervention deadlines.⁵ Pursuant to the Procedural Order, in mid-January 2015, the
14 Company notified customers of the hearing; proof was filed with Docket Control on
15 January 30.⁶

16 Following Staff's direct filing on February 23, 2015, the Company and Staff
17 entered into settlement negotiations.⁷ On March 16, 2015, Tonto Basin filed the executed
18 settlement agreement between Tonto Basin and Staff ("Settlement Agreement"), along
19 with Company testimony in support of the Settlement Agreement.⁸ Staff filed its
20

21 ² ROO at 1-2 ¶¶ 1, 3.

22 ³ ROO at 2 ¶ 8.

23 ⁴ ROO at 3 ¶ 11.

24 ⁵ ROO at 3 ¶ 16.

25 ⁶ ROO at 3 ¶ 21.

26 ⁷ ROO at 4 ¶ 28. Intervenors Tonto Creek Park and Brooke Utilities, Inc. (through Robert T. Hardcastle) were advised of the settlement negotiations. *See* ROO at 8-9 ¶¶ 56, 59.

⁸ ROO at 4 ¶ 29.

1 testimony in support of the Settlement Agreement on March 30, 2015.⁹ As part of the
2 settlement, both the Company and Staff asked that the rates become effective on or before
3 June 15, 2015.¹⁰ A hearing on the rate application was conducted on April 20, 2015.¹¹

4 **B. The Effective Date of New Rates Should Be No Later than July 15, 2015**

5 Tonto Basin's financial condition is dire, and it continues to deteriorate. During
6 the test year the Company experienced an operating loss in excess of \$80,000, and both
7 the Company and Staff agreed that significant revenue increases are needed.¹² In seeking
8 to be treated as a Class D utility, the Company sought to hasten the time in which new
9 rates would be in effect. The Company's settlement with Staff, resolving all issues in
10 dispute in the rate case, was also entered into with the hopes that it would expedite a
11 decision as the parties explicitly agreed to new rates effective on or before June 15,
12 2015.¹³ It is disappointing, therefore, that the ROO adopts the settlement but provides for
13 an effective date of August 1, 2015. This is past the Commission's own time clock for a
14 Class C utility, which Tonto Basin was treated as in this rate case. The time clock runs
15 out on July 7, 2015, meaning that the Company will be further deprived of revenues that
16 are sorely needed, as clearly established in the underlying record.

17 Additionally, Tonto Basin's bill cycle end date is July 14, 2015. Were rates to
18 become effective on August 1, there would be no meter read for the days elapsed (July 15
19 through July 31). The Company would then be forced to estimate usage and pro-rate on
20 the next billing, which would complicate matters and increase the chance of errors.
21 The Company's sister utility Payson Water Co., Inc. experienced these difficulties last
22

23 ⁹ ROO at 4 ¶ 31.

24 ¹⁰ Notice of Filing (filed March 16, 2015), Exhibit A (Settlement Agreement) ¶ 1.12.

25 ¹¹ ROO at 4-5 ¶33.

26 ¹² ROO at 6 ¶ 46; Settlement Agreement ¶ 2.1 and Settlement Schedule BAB-1.

¹³ Settlement Agreement ¶ 1.12.

1 year when the Commission declined to approve new rates to coincide with the beginning
2 of a billing cycle. The Commission has the opportunity to approve a more orderly
3 implementation of rates in this case by approving an effective date of July 15, 2015,
4 instead of August 1, 2015 as recommended in the ROO.¹⁴

5 **III. CLARIFICATION ON THE ISSUE OF CUSTOMER NOTIFICATION**

6 In their Petition, which was filed well after the hearing was completed and the
7 matter taken under advisement, Mr. and Mrs. Justus claim that because a settlement had
8 been reached prior to hearing and without their knowledge, “[t]here was a failure to
9 properly contact affected users and even Interveners [sic].”¹⁵ The Company takes
10 exception to the Justus’ belated and unfounded allegations.

11 First, that Tonto Creek Park might not have reviewed some communications about
12 settlement, while unfortunate, is now a moot point. Tonto Creek Park was aware that a
13 settlement was being negotiated and elected not to participate.¹⁶ More importantly, Tonto
14 Creek Park was afforded the opportunity to review the Settlement Agreement and discuss
15 it with the Company and Staff.¹⁷ Tonto Creek Park also affirmatively accepted the
16 settlement.¹⁸

17 Second, an “affected user” who has not moved to intervene in the case is a non-
18 party, and a non-party is not entitled to notice beyond the initial notice setting forth the
19 hearing date and information on intervention. Clearly, Mr. and Mrs. Justus received the
20 initial notice.¹⁹ They did not seek intervention. They should not be allowed to now

21 ¹⁴ The Company will submit its customer notice for Staff to review prior to the Open
22 Meeting in this matter in the hopes that its request for amendment will be approved and
thereafter notice of the new rates can go out to customers as expeditiously as possible.

23 ¹⁵ Petition at 1.

24 ¹⁶ ROO at 8-9 ¶ 59.

25 ¹⁷ ROO at 10 ¶¶ 65-66.

26 ¹⁸ ROO at 10 ¶ 67.

¹⁹ Petition at 1.

1 complain at the eleventh hour that notice was defective because they were not apprised of
2 the settlement. The Commission should certainly hear the Justus' public comment in this
3 matter, but such comment does not and cannot create an issue over notice.

4 **IV. CONCLUSION**

5 Tonto Basin respectfully requests that the Commission adopts the Company's
6 exception and modify the ROO as set forth above.

7 RESPECTFULLY SUBMITTED this 1st day of July, 2015.

8 SHAPIRO LAW FIRM, P.C.

9
10 By  _____
11 Jay L. Shapiro
12 Attorneys for Tonto Basin Water Co., Inc.

13 **ORIGINAL** and thirteen (13) copies
14 of the foregoing were filed
this 1st day of July, 2015, with:

15 Docket Control
16 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

17 **COPY** of the foregoing was hand-delivered
18 this 1st day of July, 2015, to:

19 Chairman Susan Bitter Smith
20 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

21 Commissioner Bob Stump
22 Arizona Corporation Commission
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24 Commissioner Bob Burns
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1 **COPY** of the foregoing was e-mailed & hand-delivered
2 this 1st day of July, 2015, to:

3 Brian E. Smith
4 Legal Division
5 Arizona Corporation Commission
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7 Phoenix, AZ 85007
8 besmith@azcc.gov

9 **COPY** of the foregoing was e-mailed & mailed
10 this 1st day of July, 2015, to:

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12 Tonto Creek Trail RV Park, Inc.
13 P.O. Box 669
14 Tonto Basin Arizona 85553
15 cmgeor@hotmail.com

16 Robert T. Hardcastle
17 Brooke Utilities, Inc.
18 P.O. Box 82218
19 Bakersfield, CA 93380
20 rth@brookeutilities.com

21 By: Whitney Birk
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23
24
25
26